Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 1284 of 2001
(Old No. 450 of 1990)

1. Smt Rukmani Devi
   W/o Kundan Singh
   Village Kamsal,
   Patwari Chetra Ganesh Nagar,
   Tehsil Ukhimath, District Chamoli
2. Smt. Narayan Devi
   W/o Randhir Singh
   Village Kamsal,
   Patwari Chetra Ganesh Nagar,
   Tehsil Ukhimath, District Chamoli.

..... Appellants

Versus

The State ..... Respondent

Mr. L.K. Tiwari and Mr. G.S. Negi, Advocate for the appellants.
Mr. Amit Bhat, Asstt. Government Advocate for the respondent State.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 05.03.1990, passed by learned Sessions Judge, Chamoli at Gopeshwar in Sessions trial No. 15 of 1989, whereby the appellants Smt. Rukmani Devi and Smt. Narayani Devi are convicted under Section 302 read with Section 34 and Section 201 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and each one of them is sentenced to

imprisonment for life under Section 302 / 34 of I.P.C. and three years rigorous imprisonment under Section 201 of I.P.C. Both the sentences are directed to run concurrently.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that on 01.10.1988, at about 1:00 P.M., Smt. Surji Devi (deceased) was working in her field in village Kamsal, Tehsil Ukhimath, District Chamoli (now part of District Rudraprayag). Accused / appellant Smt. Rukmani Devi is mother-in law of the deceased and accused / appellant Smt. Narayani Devi is sister-in-law (DEVRANI) of the deceased. The husband of the deceased Sri Surendra Singh (D.W. 1) was in a job in Delhi. Before the date of incident, on the day of JANMASHTAMI, when Smt. Surji Devi went to her parental house in village Kameda, she complained to her brother, mother and uncle regarding ill-treatment meted out to her by her mother-in-law and sister-in-law. The prosecution has alleged that on 01.10.1988, while Surji Devi was working in her field, she was beaten by accused / appellants and was strangulated by them. However, there is no eyewitness of the actual occurrence of causing death. Next day, on 02.10.1988, P.W. 6 Manwar Singh, brother of the deceased, got information through Bachchan Singh and Nandan Singh that the dead body of Surji Devi is lying in a field of MADWA (a coarse grain). On this, P.W. 6 Manwar Singh along with P.W. 2 Ranjit Singh, uncle of the deceased, went to village Kamsal and saw the dead body of Surji Devi in the village Kamsal. They enquired from the in-laws of the deceased as to the cause of death, regarding which no satisfactory answer was given by them to the

aforesaid witnesses. On this, complainant Manwar Singh went to report the matter to Patwari of the area (In Uttaranchal hills, in certain areas, Revenue Officers are given police powers), but the Patwaris were on strike. P.W. 6 Manwar Singh, then, made a report (Ext. A –2) of the incident to the Sub Divisional Magistrate concerned. under orders or the Magistrate, it appears that investigation was given to Station Officer of police out-post Augustmuni. P.W. 7 Bharat Singh Yadav, Sub Inspector of Police, investigated the crime, after registering the same at the reporting out-post, on 03.10.1988. The police took the dead body the deceased in their possession and prepared inquest report (Ext. A—7) on 04.10.1988. The dead body was sent for postmortem examination by the police to Gopeshwar and the postmortem examination was conducted by P.W. 5 Dr. Mayant Upadhyaya, on 05.10.1988. On conducting autopsy, the Medical Officer opined that cause of death was asphyxia due to strangulation. He also recorded the ante mortem injuries found on the person of the deceased and prepared postmortem examination report (Ext. A–1). During investigation, the Investigating Officer interrogated the witnesses. Prepared site plans Ext. A–4, Ext. A–5 and Ext. A –11. He further collected the broken bangles from the place of occurrence and prepared recovery memo (Ext A – 13). A Kandi (basket) with two ropes was also recovered from the house of the accused / appellant and a separate recovery memo (Ext. A –9) was prepared. On completion of the investigation, the Investigating Officer submitted charge sheet (Ext. A –10), against both the accused Smt. Rukmani Devi and Smt. Narayai Devi.

4) The Magistrate on receipt of the charge sheet, appears to have committed the case to the court of Sessions, for trial, after giving necessary copies to the accused, as required under Section 207 of the Cr. P.C. The Sessions Judge, after hearing the prosecution and the defecne, framed charge on 12.10.1989, of offences punishable under Section 302 read with Section 34 and that of one punishable under Section 201 of the I.P.C. against both the accused Smt. Rukmani Devi and Smt. Narayani Devi. Both the accused pleaded not guilty and claimed to be tried. On this, prosectuion got examined P.W. 1 Devki Devi (mother of the deceased); P.W. 2 Ranjit Singh(uncle of the deceased); P.W.3 Kundan Singh (father-in-law of the deceased); P.W. 4 Anil Kumar (son of the deceased): P.W. 5 Dr. Mayank Upadhyaya (who conducted the post mortem examination); P.W. 6 Manwar Singh (informant and brother of the deceased) and P.W. 7 Bharat Singh Yadav (Station Officer, who investigated the crime). The oral and documentary evidence, produced by the prosecution, was put to the accused Smt. Rukmani Devi and Smt. Narayani Devi, in reply to which they admitted that deceased Surji Devi was wife of Surendra Singh. It is also admitted by the accused in their examination under Section 313 of Cr.P.C. that Surendra Singh used to work in Delhi. It is also admitted by both the accused that property and the fields were already partitioned between Surendra Singh and his brother, and as such, both the daughter-in-laws i.e. Surji Devi (deceased) and Narayani Devi (accused / appellant) had separate kitchen. It is also admitted to the accused / appellants in their examination under Section 313 of Cr.P.C. that after the death of Surji Devi, her uncle P.W. 2 Ranjit Singh and brother P.W. 6 Manwar Singh came to

village Kamsal on receiving information about her death. Rest of the prosecution evidence is alleged to be false by the accused / appellants. In defence, D.W. 1 Surendra Singh, husband of the deceased, was got examined.

5) After hearing the prosecution and the defence, the trial court found both the accused Smt. Rukmani Devi (mother-in-law of the deceased) and Smt. Narayani Devi (sister-in-law (DEVRANI) of the deceased) guilty of the offences framed against them, and after hearing the parties on sentence, sentenced each one of them to imprisonment for life under Section 302 / 34 of I.P.C. and to rigorous imprisonment for three years under Section 201 of I.P.C. Aggrieved by the judgment and order dated 05.03.1990, both the convicts preferred this appeal before the Allahabad High Court in the year 1990, from where it is received by transfer to this Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) Before further discussions, it is pertinent to mention here, that it is a case of circumstantial evidence and not based on direct eyewitness account. It is also pertinent to mention here, that accused / appellant No. 1 Smt. Rukmani Devi is mother-in-law of the deceased and accused / appellant No. 2 Narayani Devi is sister-in-law (DEVRANI) of the deceased. From the statement of P.W. 1 Devki Devi (mother of the deceased), P.W. 2 Ranjit Singh (uncle of the deceased) and P.W. 6 Manwar Singh (brother of the deceased), it has come on record that the deceased was having sour relations with the accused / appellants i.e. her mother-in-law and sister-in-law. It is also established on the record that Surji Devi (deceased) died an unnatural death. Postmortem examination report (Ext. A –1) read

with the statement of P.W. 5 Dr. Mayank Upadhyaya shows that following ante mortem injuries were found on the person of the deceased:

1. ***Lacerated wound over right scalp 7cm X 3.5 cm X bone deep.***
2. ***Left eye ball protruding out from its place.***
3. ***A hole in left nostril 0.5 cm X 0.3 cm at the side of nose ring.***
4. ***Lacerated wound 6 cm X 3 cm X 1.5 cm, behind and below left ear.***
5. ***Abraded contusion blackish in colour 7cm X 4 cm on back and right side of the rod of neck.***
6. ***Right shoulder abraded 22 cm X 10 cm.***
7. ***Right arm abraded on the outer aspect above the elbow joint 10 cm X 4.5 cm.***
8. ***Multiple abraded contusions along outer aspect of left arm 12 cm above and 15 cm below left elbow. 15 in number varying in size 1 cm X 1 cm to 9 cm X 5 cm.***
9. ***An abraded contusion 7 cm X 5 cm in the front part of right hip bone.***
10. ***LEGATURE MARK – circular mark 24 cm X 2 cm, 1 cm above Hyoid bone, around the neck, on cutting ecchymosis present.***

The last injury, mentioned above, clearly indicates that the deceased was strangulated, before her death.

6) P.W. 3 Kundan Singh is father-in-law of the deceased. Accused / appellant No. 1 Rukmani Devi is his wife and accused / appellant No. 2 Narayani Devi is his younger daughter-in-law. This witness has stated on oath that Surji Devi (deceased) got married to his elder son Surendra Singh about ten years before the incident. The

witness further states that about one year before the incident, he had already partitioned the property and the fields, between his two sons, and both the daughters-in-law, as such were living separately. About the death of his daughter-in-law surji Devi, this witness states that on that day, he had gone to work in a field to plough it. Both the daughters-in-law accused Narayani Devi and Surji Devi (deceased) had also gone to their fields. P.W. 3 Kundan Singh further narrates that he returned back from the field at about noon. Rukmani Devi returned back at about 4:00 P.M., but Surji Devi did not return from the field by 6:00 P.M. On this, the witness states that search for Surji Devi was started and it was found that Surji Devi lying in the field of Bachchan Singh. P.W. 3 Kundan Singh further states that Surji Devi was still alive but unable to speak. He then took Surji Devi on his back of the house. After she was brought in the house she succumbed to the injuries received by her. P.W. 3 Kundan Singh states that the information, on the next day, was sent to the parents of Surji Devi (deceased), on which her brother Manwar Singh (P.W. 6) and uncle Ranjit Singh (P.W. 2) came to village Kamsal. The witness further states that he also signed the inquest report prepared by the police. Though, the statement of this witness does not throw directly any light on the commission of murder either by Smt. Rukmani Devi or by Smt. Narayani Devi, but this witness did corroborate that Surji Devi died of homicidal death and no information was given to police by him.

7) P.W. 4 Anil Kumar is son of the deceased, who was aged 10 years at the time of making his statement, before the court. This witness has stated that he had gone to

school on that day and when he came back and found his mother lying dead. However, this witness has denied if there had been any quarrel between his mother and the accused / appellants. As such, the prosecution got this witness declared hostile and cross-examination him. The reason that why this witness has not supported the prosecution story against accused / appellants is also clear from his statement, as he admits that he, after the death of his mother, lives with his grandmother (DAADI). His grandmother (DAADI) is one of the accused in this case.

8) The circumstances against the accused / appellants which have come from the evidence on record, are as under:

1. From the statement of P.W. 1 Devki Devi, P.W. 2 Ranjit Singh and P.W. 6 Manwar Singh, it has come on record, that the deceased had sour relations with the accused / appellants.
2. Surji Devi (deceased) has died homicidal death. From the medical evidence on record it is established that she has died due to asphyxia by strangulations.
3. No first information report was got lodged by anyone from the side of the accused / appellants or any member of the family of husband of the deceased.
4. It has also come on record that Surendra Singh, husband of the deceased, was working at Delhi.
5. It is also proved on record from the statement of P.W. 1 Devki Devi (mother of the deceased), P.W. 2 Ranjit Singh (uncle of the deceased)

and P.W. 6 Manwar Singh (brother of the deceased) that after Surendra Singh (husband of the deceased) came from Delhi to his village he offered money to them to hush up the matter.

6. D.W. 1 Surendra Singh has stated that deceased was suffering from some disease and she under went some medical treatment at Delhi also. On behalf of the defence, an attempt has been made to develop the story that the deceased committed suicide, due to her illness. This witness has reached in his village after two days of the death of the deceased. Not a single witness from the village Kamsal has been produced to show that the deceased had committed suicide. Not only this, in the statements recorded under Section 313 of Cr.P.C., none of the accused / appellants have taken a plea that deceased had committed suicide. Nor any suggestion on this point has been given to the prosecution witness either?

7. It has also come on record in the statement of the witnesses that Surendra Singh and his brother were living in Delhi in connection of their jobs and as far as the father-in-law Kundan Singh (P.W. 3) is concerned, there is nothing on record to show that the deceased had any sour relations with him. As such, the only two remaining in the family, are accused / appellants Rukmani Devi and Narayani Devi.

8. P.W. 3 Kundan Singh (father-in-law of deceased) has stated that on 01.10.1988, Surji

(deceased) and Narayani (accused) had gone to fields but only Narayani came back.

9) Above chain of circumstances suggests that accused / appellant Narayani Devi has committed murder of Surji Devi and also that there was no motive on the part of anyone else in the village who could have murdered Surji Devi. This Court has to scrutinize whether Rukmani Devi had common intention to commit the crime with Narayani Devi, or not? On this point, there is nothing on the record to suggest if there is prior meeting of minds of Narayani witnesses have stated, if Rukmani Devi had gone to the field on the day when Surji Devi was found dead, in the field. P.W. 3 Kundan Singh (father-in-law of the deceased) has stated that both the daughters-in-law i.e. accused / appellant Narayani Devi and Surji Devi (deceased) had gone to the field and only one of them i.e. accused / appellant Narayani Devi returned home by 4:00 P.M. P.W. 3 Kundan Singh has also clarified that he was present at home as he had already returned back from work to his house, by noon.

10) P.W. 3 Kundan Singh, who is not only father-in-law of the deceased, but also of Narayani Devi and husband of Rukmani Devi, has stated in his cross-examination that Rukmani Devi used to look after the children of both the daughters-in-law during day time, at her house. This statement in above circumstances coupled the fact that two daughters-in-law used to fight, even after the partition of their fields had taken place, suggests that it could only be accused / appellants No. 2 Narayani Devi and none else,

who could have committed the murder. The chain cannot be said to be complete as against accused / appellant No. 1 Rukmani Devi as none of the witnesses have stated that she had ever gone to the field on the day when the incident had taken place. Therefore, we are of the opinion, that while the prosecution has been successful in proving the charge against accused / appellant No. 2 Narayani Devi, beyond all reasonable doubt, the same cannot be said as against accused / appellant No. 1 Rukmani Devi, against whom the chain cannot be said to be complete.

11) Apart from this, as far as the charge under Section 201 of I.P.C. is concerned, it is not proved beyond reasonable doubt if either of the two accused have caused disappearance of evidence of offence of murder. As such, we are not in agreement with the trial court that the charge of offence punishable under Section 201 of I.P.C. is proved against any of the two accused / appellants.

12) Therefore, for the reasons discussed above, while we are is agreement with trial court that charge of offence punishable under Section 302 of I.P.C. is proved beyond reasonable doubt against accused / appellant No. 2 Smt. Narayani Devi, but the same cannot be held as against accused / appellant No. 1 Smt. Rukmani Devi, for the chain of circumstances against her is not complete, as it is not shown that she had gone to field on the day when Surji Devi was found dead of homicidal death. Accordingly, this appeal deserves to be allowed, partly. The same is partly allowed to the extent that the impugned judgment and order dated 05.03.1990, as against accused / appellant No. 1 Smt. Rukmani Devi is liable to be set aside, and the same is set aside, to that extent. Accused / appellant No. 1 Smt.

Rukmani Devi is acquitted of the charge of offence punishable under Section 302 / 34 of I.P.C. and that of one under Section 201 of I.P.C. As far as accused / appellant No. 2 Smt. Narayani Devi is concerned, her conviction under Section 302 of I.P.C. is affirmed, and sentence of life imprisonment under Section 302 of I.P.C., is also affirmed. However, her conviction under Section 201 of I.P.C. and the sentence awarded there under, is set aside. The Appeal stands disposed of, accordingly. Send the lower court record to the court concerned for making the accused / appellant No. 2 Smt. Narayani Devi to serve out the sentence of imprisonment for life awarded against her. (Accused / appellant No. 1 Smt. Rukmani Devi need not to surrender. Her bail bonds are cancelled and sureties stand discharged).

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

Dt. February 23, 2007.
H. Negi